

(7) On a confirmation test and, where applicable, on a screening test, the sequential test number or alcohol concentration displayed on the EBT is not the same as the sequential test number or alcohol concentration on the printed result.

(b) [Reserved]

[59 FR 7357, Feb. 15, 1994, as amended at 59 FR 43002, Aug. 19, 1994]

§40.81 Availability and disclosure of alcohol testing information about individual employees.

(a) Employers shall maintain records in a secure manner, so that disclosure of information to unauthorized persons does not occur.

(b) Except as required by law or expressly authorized or required in this section, no employer shall release covered employee information that is contained in the records required to be maintained by this part or by DOT agency alcohol misuse rules.

(c) An employee subject to testing is entitled, upon written request, to obtain copies of any records pertaining to the employee's use of alcohol, including any records pertaining to his or her alcohol tests. The employer shall promptly provide the records requested by the employee. Access to an employee's records shall not be contingent upon payment for records other than those specifically requested.

(d) Each employer shall permit access to all facilities utilized in complying with the requirements of this part and DOT agency alcohol misuse rules to the Secretary of Transportation, any DOT agency with regulatory authority over the employer, or a state agency with regulatory authority over the employer (as authorized by DOT agency regulations).

(e) When requested by the Secretary of Transportation, any DOT agency with regulatory authority over the employer, or a state agency with regulatory authority over the employer (as authorized by DOT agency regulations), each employer shall make available copies of all results for employer alcohol testing conducted under the requirements of this part and any other information pertaining to the employer's alcohol misuse prevention program. The information shall include

name-specific alcohol test results, records and reports.

(f) When requested by the National Transportation Safety Board as part of an accident investigation, an employer shall disclose information related to the employer's administration of any post-accident alcohol tests administered following the accident under investigation.

(g) An employer shall make records available to a subsequent employer upon receipt of a written request from a covered employee. Disclosure by the subsequent employer is permitted only as expressly authorized by the terms of the employee's written request.

(h) An employer may disclose information required to be maintained under this part pertaining to a covered employee to that employee or to the decisionmaker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the individual, and arising from the results of an alcohol test administered under the requirements of this part, or from the employer's determination that the employee engaged in conduct prohibited by a DOT agency alcohol misuse regulation (including, but not limited to, a worker's compensation, unemployment compensation, or other proceeding relating to a benefit sought by the employee).

(i) An employer shall release information regarding a covered employee's records as directed by the specific, written consent of the employee authorizing release of the information to an identified person. Release of such information is permitted only in accordance with the terms of the employee's consent.

§40.83 Maintenance and disclosure of records concerning EBTs and BATs.

(a) Each employer or its agent shall maintain the following records for two years:

(1) Records of the inspection and maintenance of each EBT used in employee testing;

(2) Documentation of the employer's compliance with the QAP for each EBT it uses for alcohol testing under this part;

(3) Records of the training and proficiency testing of each BAT used in employee testing;